IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

IN RE	)	
	)	**Case No. 98-03213**
STAN C. MONCUR and	)	
MARILYN MONCUR,	)	**MEMORANDUM OF DECISION**
	)	
Debtors.	)	
_____	)	

Brent T. Robinson, LING NIELSEN AND ROBINSON, Rupert, Idaho, for Debtor.

Warren Derbidge and Amy S. Howe, U.S. Attorney's Office, Boise, Idaho, for Farm Service Agency.

Background.

Debtors Stan and Marilyn Moncur object to the proof of claim submitted in their Chapter 12 bankruptcy proceeding by Farm Service Agency ("FSA"), formerly Farmers Home Administration ("FmHA"). After a hearing on March 4, 1999, the matter was taken under advisement. This Order sets forth the Court's findings of fact and conclusions of law. F.R.B.P. 7052.

Facts.

Passage of the Agricultural Credit Act in 1988 mandated a change in the manner in which FmHA could deal with its delinquent agricultural

borrowers. Several new programs designed to meet the various needs of such borrowers were made available as a result of the Act. Because they were delinquent on their FmHA loans, Debtors were notified by letter in November 1988 of these new programs offered by FmHA.

On November 28, 1988, Debtors filed an application with FmHA to take advantage of one program which would allow them to "write-down" their FmHA loan balance. Pursuant to this program, an appraisal was performed on Debtors' real property securing FmHA's debt. Based upon the value of their farm land and other factors, Debtors were later informed that they were eligible to write-down approximately $306,000 of their existing loans. However, there were conditions to Debtors' ability to participate in this program. One condition to the proposed debt write-down required Debtors to enter into a "Shared Appreciation Agreement" ("SAA") with FmHA. On March 7, 1989, Debtors agreed to the terms of the FmHA offer to restructure their debts, and on March 10 they executed the SAA. Time passed and Debtors did not hear from FmHA, now known as FSA, until they received a letter from Dee Seamons, the County Executive Director, dated June 17, 1997. This letter reiterated the terms and conditions of the SAA, and reminded Debtors of their obligations under the agreement, which was about to expire.

On September 28, 1997, FmHA conducted another appraisal to determine the updated value of Debtors' property. Based on this new valuation, FSA contends that Debtors owe FSA $42,000 under the terms of the SSA, a sum which represents 50% of the increase in the value of Debtors' property as determined in 1997 as compared to its value in 1989 when the agreement was executed. To support its claim, FSA relies upon the terms of the SSA and what it contends is the clear language of the federal regulations governing this particular farm program. FSA interprets the agreement and regulations to require that it "recapture" any such appreciation in the value of Debtors' property at the end of the term of SAA agreement, or upon sale of the real property, or farming operations on the property cease, whichever first occurs. Debtors dispute FSA's position, and assert that the SAA does not provide for any recapture of appreciation upon the expiration the SAA.

Discussion.

Under Section 502(a) of the Bankruptcy Code, a creditor's claim is deemed allowed unless a party in interest objects. Debtors object to allowance of FSA's claim arguing, as provided in Section 502(b)(1), that the claim is not enforceable against Debtors or their property. A filed proof of claim is prima

facie evidence of the validity of the claim. Fed. R. Bankr. P. 3001(f). One objecting to the claim must present evidence that tends "to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Hardin v. Gianni (In re King Street Investments, Inc.)*, 219 B.R. 848, 858 (9th Cir. B.A.P. 1998)(quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)).

The parties have agreed that for purposes of these proceedings, Debtors' property had a value of approximately $66,000 at the time the SAA was signed in 1989. Exhibit 3: Appraisal Report at 4. They also agree that as of September 1998 the property was worth $150,000. Exhibit 18: Appraisal Report at 2. The SAA executed between FmHA and Debtors provides in pertinent part that:

> in consideration of FmHA writing down the above amounts and restructuring the loan, Borrower agrees to pay FmHA an amount according to one of the following payment schedules:
>
> 1. Seventy-five (75) percent of any positive appreciation in the market value of the property securing the loan as described in the above security instrument(s) between the date of this Agreement and either the expiration date of this Agreement or the date the Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs four (4) years or less from the date of this Agreement.

> 2. Fifty (50) percent of any positive appreciation in the market value of the property securing the loan above as described in the security instruments between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays the loan in full, ceases farming or transfers title of the security, if such event occurs after four (4) years but before the expiration date of this Agreement.

Exhibit 14: Shared Appreciation Agreement, p. 1-2. The amount of FSA's claim filed in the bankruptcy case represents 50% of the increase in value of Debtors' property over the term of the SAA.

The SAA provisions quoted above mirror the sample language set forth in an exhibit to the federal regulations governing shared appreciation agreements. 7 C.F.R. § 1951, Subchapter S, Exhibit D. Unfortunately, the SAA is not crystal clear with respect to the nature of Debtors' obligation to FSA at the expiration of the ten-year SAA term should none of the contingencies requiring early repayment occur. Therefore, the Court must construe the contract to determine whether it allows for recapture based solely upon the expiration of the SAA.

Government contracts are to be interpreted "against the backdrop of the legislative scheme that authorized them, and . . . in light of the policies underlying the controlling legislation." *Maricopa-Stanfield Irrigation and*

Drainage District v. United States, 158 F.3d 428, 435 (9th Cir. 1998)(quoting *Peterson v. United States Department of the Interior*, 899 F.2d 799, 807 (9th Cir. 1990)). Here, the regulations clarify any ambiguity in the SAA by describing the scheme upon which the SAA is based. In particular, the regulations make clear that FSA's share of appreciation in the value of the property may be recaptured even though early payment of the loan is not required. In such event, the shared appreciation is due upon expiration of the SAA.

The regulations in effect when Debtors entered the SAA explain that "[r]ecapture of any appreciation will take place at the end of the term of the Agreement, or sooner if the following occurs . . . ." 7 C.F.R. § 1951.914(b). The regulations then set forth those events that trigger early recapture of any appreciation: a sale or transfer the property; if the loan obligation is satisfied; or if the debtor ceases farming operations. 7 C.F.R. § 1951.914(b)(1)-(3).

Debtors should not be surprised by FSA's position that it is entitled to recapture the appreciation. Not only do the regulations explain the borrower's duty to pay shared appreciation at the end of the ten-year SAA term, Debtors also had that information available in the written instructions FmHA distributed to them concerning their application to participate in the program. Those instructions first inform the borrower that a SAA must be signed as a condition of

the loan write-down program. Next, the instructions explain the conditions under which FmHA will ask for a shared appreciation payment during the term of the SAA (i.e., if the borrower sells or transfers the property, ceases farming operations, or satisfies the obligation). Finally, the instructions state, "[i]f you do not do one of these things during the 10 years, FmHA will ask you to repay part of the debt written down at the end of the 10 years. FmHA can only ask you to repay if the value of your real estate collateral goes up." Exhibit 1 at p. 8.

Debtors were further reminded of their obligation to pay shared appreciation at the expiration of the SAA by Mr. Seamon's letter dated June 17, 1997:

> This letter is intended to remind you of your potential obligation to repay all, or a portion, of the debt the FSA wrote down. In accordance with the SAA, you agreed to pay appreciation, if any, in the value of the property up to the amount of the debt written down.

Exhibit 17. The letter explains that recapture will be due upon the passage of ten years (that is, upon the expiration of the SAA), transfer of the property, cessation of farming, or satisfaction of the obligations.

Debtors have not provided the Court with any case law to support their reading of the SAA and federal regulations. Debtors assert their objection to FSA's claim is based upon the plain language of the SAA, the applicable

regulations, and certain statements allegedly made by administrators of the FmHA program. Mr. Moncur, in his testimony, complains that FmHA representatives only told him that there "may" be a payment due at the end of the term of the agreement. This statement should not have misled Debtors. The statements are entirely true as any recapture payment due in the future was dependent upon whether the property had appreciated in value during the term of the SAA.

The Court declines to find that FmHA agents misled Debtors concerning their obligations under the SAA. However, without regard to what Mr. Moncur may have been told by FmHA agents when he entered the program, Debtors had sufficient reliable information available to them in the written instructions they received, and in the applicable federal regulations, to provide them with fair notice that FmHA could seek recapture of any shared appreciation after the SAA term expired.

FSA cites only one case, *Sentinel Federal Credit Union v. United States (In re Tunnissen)*, 216 B.R. 834 (Bankr. D. S.D. 1996), interpreting the shared appreciation provisions of an SAA. The Court was unable to locate any additional case law on point. In *Sentinel*, the bankruptcy court construed a SAA to provide for at least a 50% appreciation recapture payment upon the expiration

of the agreement. However, *Sentinel* involved the valuation of FSA's secured claim prior to the expiration of the relevant SAA. While *Sentinel* is arguably distinguishable, it does reinforce the Court's understanding of the general scheme of the regulations. The programs requires that, in consideration of FSA's agreement to take less than the full amount due in satisfaction of its debt, at the expiration of the SAA, a borrower will be required to pay a portion of the appreciation in the value of a borrower's land, if any. In essence, while the program allows the borrower to escape repayment of a portion of its debt, it recognizes that it would be unfair to also allow the borrower to retain the full benefit of the appreciation in the value of the farm during the repayment period. This is a reasonable policy.

In sum, the federal regulations, the written instructions given to borrowers concerning the SAA, and the correspondence to Debtors from FmHA during the term of the SAA shed light on the overall purpose and effect of the SAA. Without question, the program contemplated a recapture payment at the conclusion of the SAA term if payment in full of the write-down balance had not been made during the term of the SAA. For these reasons, the Court construes the contract in favor of FSA, and finds that Debtors have not satisfied their burden of persuading the Court that FSA's claim is unenforceable.

Debtors also assert that FmHA did not comply with the regulations regarding servicing the loan. The regulations provide that the FmHA County Supervisor will review the real estate records every six months, starting at the execution date of the SAA, to determine if the borrower has transferred the property. 7 C.F.R. § 1951.914(a)(4). If the borrower has not triggered early payment of the shared appreciation, the County Supervisor is directed to send a letter to the borrower at least five months prior to the expiration of the SAA identifying the date that recapture is due containing a list of appraisers for the property from which the borrower is to select one.

In this case, there is no evidence of correspondence between FmHA or FSA and Debtors from the time the SAA was executed until the letter sent to Debtors from Dee Seamons on June 17, 1997. That letter in fact reminded Debtors of their obligation to pay shared appreciation upon the expiration of the SAA. However, while an appraisal was performed on the property for FmHA, Debtors were not offered the option of choosing an appraiser as the regulations provide. However, Debtors have not established how the failure by FSA to offer them a choice of appraisers resulted in any prejudice to them. In fact, Debtors have accepted the 1997 appraisal as representative of the value of the property. Therefore, any failure by FSA to follow the regulations

regarding the servicing of Debtors' SAA amounts to a harmless error. Such a failure certainly does not rise to a breach of Debtors' agreement with FSA, nor does it provide a basis for disallowing FSA's claim in Debtors' bankruptcy case.

Conclusion.

For the reasons set forth above, this Court finds that Debtors have not presented sufficient proof to defeat FSA's claim. The agreement, construed in concert with the applicable regulations and the instructions provided to Debtors when they entered the write-down program, requires Debtors to share the appreciation in the value of their farm with FSA. In addition, any failure by FSA to follow the applicable rules in servicing the SAA have not been prejudicial to Debtors and does not absolve Debtors' duty to pay amounts owed to FSA. Debtors' objection will be denied by a separate order.

DATED This _____ day of May, 1999.

_____
JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

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CASE NO.: 98-03213

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED:

By_____
Deputy Clerk